

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

DR. AHMAD A. VADIE

PLAINTIFF

vs.

CIVIL ACTION NO. 1:95CV199-D-D

MISSISSIPPI STATE UNIVERSITY

DEFENDANT

MEMORANDUM OPINION DENYING MOTION FOR JUDGMENT
AS A MATTER OF LAW AND IN THE ALTERNATIVE FOR A NEW TRIAL

Subsequent to a jury trial that resulted in a verdict for the plaintiff and the entry of judgment for the plaintiff for the amount of \$300,000.00, the defendant, Mississippi State University, has filed its motion for judgment as a matter of law and in the alternative for a new trial pursuant to rule 50(b) of the Federal Rules of Civil Procedure. In the case *sub judice*, the court applied the applicable limitations on damages as set forth in 42 U.S.C. § 1981(a)(3)(B) and reduced a \$350,000.00 verdict to the statutory limit of \$300,000.00.

The grounds averred in support of the motion are numerous and lengthy. Several of the issues were previously addressed in this court's memorandum opinion of May 20, 1996, wherein summary judgment was granted as to some claims and denied as to others. Further, the opinion of the Fifth Circuit Court of Appeals dated February 17, 1997, and this court's order of August 24, 1998, address several of the matters now raised in the post trial motion.

The court has considered each point raised in the defendant's motion pursuant to the well established standard pronounced by the Fifth Circuit Court of Appeals in the seminal case *Boeing v. Shipman*, 411 F.2d 365 (5th Cir. 1969). The court is of the opinion that the motion for judgment as a matter of law and/or for a new trial is not well taken.

This court finds that the EEOC claim was timely filed and that jurisdiction in this civil case was appropriate in this court. *See International Union of Electrical Workers v. Robbins & Myers, Inc.*, 429 U.S. 229 (1976). Further, the court is of the opinion that a jury could reasonably conclude that Mississippi State University discriminated against the plaintiff based on his national origin or race. Addressing a point that has arisen, this court also finds that the jury could logically conclude that the letter from the Mississippi State Board of Institution of Higher Learning to Dr. Vadie dated November 17, 1994, was the operative document that informed the plaintiff that he was not hired and would not be hired in any of the vacant positions in the Department of Chemical Engineering at Mississippi State University.

The objections and matters raised in the jury charge are a matter of record in the case at hand. Specifically, this court addresses the averment that plaintiff's instruction number 10 was erroneously given to the jury. The court has reviewed a transcript of the jury charge, as well as, the documents actually read by this court to the jury. The record reflects that instruction P-10 was not given to the jury. This court charged the jury with court's instruction number 1 which contained the following pertinent language, to wit:

There are two types of evidence that you may consider. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence, the proof of circumstances that tend to prove or disprove the existence or nonexistence of certain other facts. The law makes no distinction between direct and circumstantial evidence but simply requires that you find the facts from a preponderance of all of the evidence, both direct and circumstantial.

A plaintiff can prove the employer's articulated reasons are pretext in two ways, either, one, by persuading the jury that a discriminatory reason more likely motivated the employer or, two, indirectly by showing that the employer's proffered explanation is unworthy of credence. Evidence that the plaintiff was clearly better qualified would be one way of showing that the defendant's explanation for the employment decision is a pretext.

This court gave court's instruction number 1 utilizing the language set forth in the 5th Circuit case of *Amburgey v. Corhart Refractories Corp.*, 936 F.2d 805, 813 (5th Cir. 1991) and pattern instruction number 2.18 from the 5th Circuit Pattern Jury Instruction Manual of 1997. These two instructions set forth a current and accurate statement concerning the, "the clearly better qualified plaintiff," and the application of circumstantial evidence. In the case *sub judice*, the court is of the opinion that the defendant's motion for judgment as a matter of law and/or for a new trial is not well taken. The same will be denied by a separate order entered this date.

SO ORDERED, this the _____ day of December 1998.

United States District Judge

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DEFENDANT

ORDER DENYING MOTION FOR JUDGMENT AS A MATTER OF
LAW AND/OR FOR A NEW TRIAL

Pursuant to the memorandum opinion entered this day, it is hereby ordered that the defendant's motion for judgment as a matter of law and/or for a new trial is DENIED.

All memoranda, documents and briefs pertaining to subject motion are incorporated in and made a part of the record in this cause.

ORDERED AND ADJUDGED, this the _____ day of December 1998.

United States District Judge